IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4440 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUBHASH OCHHAVLAL SONI - Petitioner(s)
Versus
BANK OF BARODA - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner(s) : 1,
MR DARSHAN M PARIKH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 18/06/2007

ORAL JUDGMENT

In this matter, on 19.02.07, this Court issued

Notice returnable on 14.03.07. Mr. Darshan Parikh appears for the respondent.

RULE, returnable today. Mr. Darshan Parikh waives service of notice.

Heard learned advocate Mr. T.R. Mishra on behalf of the petitioner and Mr. Darshan Parikh appearing for the respondent. With the consent of learned advocates, the matter is taken up for final hearing today.

The petitioner is a compulsorily retired employee of the respondent – Bank of Baroda (hereinafter referred to as, “the Bank”). At the relevant time, the petitioner was serving as a Clerk. For the acts of alleged misconduct, a disciplinary proceeding was initiated against the petitioner. By an order dated 3rd March 2004, he was ordered to be compulsorily retired from service with superannuation benefits, i.e. pension and/or provident funds and gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time. The said order of compulsory retirement has become final. It is now the claim of the petitioner that in view of his retirement from service, he is entitled to pension whereas the Bank has disputed his claim. According to the Bank, the petitioner having been compulsorily retired from service as a penal measure, he is not entitled to pension.

Mr.Mishra has relied upon the judgment of this Court in the matter of Jogsingh Rawatsingh Rajput v/s. Bank of Baroda [Special Civil Application No. 15364 of 2006 decided on 8th September 2006 – Coram: Ms. R.M. Doshit, J.] and Kanaiyalal Kantilal Brahmbhatt v/s. Bank of Baroda (Special Civil Application No.7671 of 2005 decided on 1st September, 2006; Coram: Akil Kureshi, J.). He has submitted that this Court has interpreted the relevant regulations of the Bank and has held that the delinquent servants who are compulsorily retired also are entitled to pension.

Mr.Parikh has submitted that the employees of the Bank are entitled to pension under the Bank of Baroda (Employees') Pension Regulations, 1995. Regulation 33 of the said Regulations confers discretion upon the Bank whether or not to allow pension in case of compulsory retirement. He has submitted that this Court has, in the above matters of Jogsingh Rawatsingh Rajput and Kanaiyalal Kantilal Brahmbhatt, committed error in interpreting the aforesaid Regulation 33. The matter, therefore, requires to be referred to the Larger Bench.

Mr. Parikh for the Bank has further submitted that in the present case, the services of the petitioner came to an end in view of a penalty of compulsory retirement imposed on the petitioner after a departmental inquiry for very serious charge of stealing 9 Demand Drafts for consideration of Rs.10,000/- received from one B.P. Rohit and caused a loss of Rs.29,51,125/- by encashment of three of such stolen drafts. These charges were very serious charges of fraud for which a penalty of compulsory retirement is imposed. In such a grave situation and for such grave charges, when a -penalty of compulsory retirement is imposed, it cannot be said that the management has erred in not exercising discretion in favour of the petitioner for granting him compulsory retirement pension and no interference is called for from this Court. He has therefore submitted that there is nothing illegal or impermissible in the action of the management and the claim of the petitioner is misconceived and not tenable at law. Even the penalty imposed provides that the benefits must be otherwise due.

I am unable to agree with Mr.Parikh. Considering Regulation 33 read with Regulation 22 of the said Regulations, this Court has held that the only discretion left under Regulation 33 is whether to grant 100 per cent

pension or to reduce it to not less than 2/3rd of the full pension admissible to the delinquent servant. I am in agreement with the learned Judges. No case for reference to the Larger Bench has been made out.

In above view of the matter, the petition is allowed. It is declared that the petitioner is, in spite of his compulsory retirement from service, entitled to receive pension. It is directed that the Bank shall, within ten weeks from today, consider the case of the petitioner for grant of full pension or to exercise discretionary power under the aforesaid Regulation 33. The arrears of pension shall be paid on or before 30th November, 2006.

Rule is made absolute in the above terms. The parties shall bear their own cost.

[H.K.RATHOD, J.]

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